PRESERVED

App. F. IX-4

*Previous References*

1937.
( CS )

File No. 211-37
Serial Nos. 1-2

*Letter References.*
CS 251-41 (1-2)

# GENERAL AND REVENUE SECRETARIAT.

*Serial Nos.* Two.

**Part B for** July 1938

**SUBJECT.**

Amendment of Rules 3, 4, 7 & 14 of Order XXXII of the Code of Civil Procedure.

SL-2

To the Registrar, High Court
NOP. 337 of 16.7.38

WD 0418—GPB—22,500—29-8-36

Sanctions the amendment.

21/6/38

7641 (1

General and Revenue Secretariat

C5 File No. 21 of 1937. [App. F. III-2

| Serial No. | |
|---|---|
| 1 | From. The Registrar High Court Roc No 588/27-28 Dt 28-6-38<br>Recommends Certain amendments to Rules 3, 4, 7 and 14 of order XXXII of the Code of Civil Procedure<br>Submitted With a draft of a G.O. Sanctioning for approval or Other orders<br>may be approved<br>These rules have been suggested by the Rule Committee & approved by the High Court similar ones are framed in the Madras High Court<br>May be approved<br>(1st member) |
| 2 | Issued P. 337 of 16th July 1938 to the Registrar H.C. |

OFFICE OF THE FIRST MEMBER OF COUNCIL
JUL 7 1938
No. 2321

TYPING SECTION
7 JULY 1938
GEN. & REV. SECT.

NOTE—Contn. Sheet.

764/837

(2

R. O. C. No. 588/27-28
~~Dis.~~
Encls.

**HIGH COURT OF MYSORE,**
**Public Office Buildings, Cubbon Park,**

*Bangalore,* 28th June *193* 8.

Ch 211-37-1.

FROM T. Shamiengar, Esq., B.A., B.L.,
~~A. Sundararaja Rao, Esq., B.A., B.L.,~~
~~S. Venkata Ranga Iyengar, Esq., B.A., LL.M.,~~
*Registrar, High Court of Mysore.*

To
Protez

CHIEF SECRETARY. 29 JUN 19 GOVT. OF MYSORE.

H.V. Ramasvami, Esq., M.A., B.L.,
Chief Secretary to the Government of Mysore,
Bangalore.

SIR,

With reference to paragraphs 28 and 31 of the Report of the Mysore Laws Delays Committee, I am directed to state that the High Court proposes to amend Rules 3, 4, 7 and 14 of Order XXXII of the Code of Civil Procedure as set out in the appendix to this letter. The proposed amendments have been considered by the Rule Committee, who support them. They were published in the Mysore Gazette dated the 14th April 1938 in accordance with Section 122 of the Code; but no objection nor suggestion has been received. Amendments generally similar in effect have been made by the Madras High Court. I am to request that the Government may be pleased to accord sanction to the proposed amendments under Section 126 of the Code.

I have the honour to be,

Sir,

Your most obedient servant,

T. Shamiengar
Registrar.

mm

VJC

## APPENDIX.

Amendments of Rules 3, 4, 7 and 14 of Order XXXII of the Code of Civil Procedure.

(a) Substitute the following for the existing Rule 3:-

3. (1) Subject to the other provisions of this rule, any person who is of sound mind and has attained majority may act as next friend of a minor plaintiff or, if so appointed by the Court, be the guardian of a minor - defendant for a suit provided that the interest of that person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or in the case of a guardian for the suit, a plaintiff.

(2) When a defendant is a minor, the Court on being satisfied of his minority shall appoint a proper person to be his guardian for the suit.

(3) When a minor party has a guardian appointed or declared by competent authority, or, where there is no such guardian and the minor party has his father or other natural guardian according to his personal law, no person other than such guardian appointed or declared by competent authority or father or other natural guardian as the case may be shall act as next friend of the minor, if a plaintiff, or be appointed his guardian for a suit, if he is a defendant, unless the Court finds, for reasons which shall be recorded, that it is for the minor's - welfare that some other person be permitted to act as his next friend or be appointed his guardian for the suit, as the case may be.

(4) An application for the appointment of a - guardian of a minor defendant for a suit may be made by the plaintiff in the suit or by any person interested in the minor defendant.

(5) Every application made under sub-rule (4) shall be supported by an affidavit verifying the fact that the proposed guardians has not, or that none of the proposed guardians has, any interest in the matters in controversy in the suit adverse to that of the minor and that the proposed guardian or guardians are fit persons to be so appointed. The affidavit shall further state according to the circumstances of each case (a) the name and address of the natural guardian, if any, of the minor defendant according to his personal law or of his guardian, if any, appointed or declared by competent authority, or (b) if there is no such guardian, the name and address of the person in whose care the minor defendant is and the name and address of the person, if any, who is the defacto manager of the minor defendant's property, and (c) the names and addresses of persons, if any, suitable by reason of relationship, interest or otherwise to be appointed guardian of the minor defendant for the suit if the Court does not appoint any natural guardian, or legally appointed or declared guardian or manager or person in whose care the minor defendant is as herein described.

(6) No application for the appointment of a guardian of a minor defendant for a suit shall be combined with an application for bringing on record a legal representative of a deceased plaintiff or defendant.

(7) No order shall be made on any application presented under sub-rule (4) above except after notice to the natural guardian, if any, of the minor defendant according to his personal law or to his legally appointed or declared - guardian, if any, or, if there is no such guardian to the person in whose care the minor defendant is and to the defacto manager of his property, if any, and after hearing

hearing any objection urged by or on behalf of any such person or of any other person interested in the minor defendant, provided that the Court may, in any case, if it thinks fit, issue a notice to the minor also.

(8) No person shall, without his consent, be appointed guardian of a minor defendant for a suit. Whenever an application is made proposing the name of a person as guardian of a minor defendant for a suit, a notice in Form No.11 set forth in Appendix H hereto shall be served on the proposed guardian, unless the applicant himself be the proposed guardian or the proposed guardian consents.

(9) If the Court finds no other person competent and willing to be appointed guardian of a minor defendant for a suit, the Court may appoint any of its officers or a pleader of the Court to be the guardian.

(10) When a guardian for the suit of a minor defendant is appointed and it is made to appear to the Court that the guardian is not in possession of any or sufficient funds for the conduct of the suit on behalf of the defendant and that the defendant will be prejudiced in his defence thereby, the Court may, from time to time, order the plaintiff to advance moneys to the guardian for purpose of his defence and all moneys so advanced shall form part of the costs of the plaintiff in the suit. The order shall direct that the guardian, as and when directed, shall file in Court and account of the moneys so received by him.

(b) Omit Rule 4.

(c) Add the following as sub-rule 1A to Rule 7(1).

When

the said minor this Court doth sanction the said compromise on behalf of the said minor and with the cosent of all parties hereto:-

It is ordered as follows:-

(Set out the terms of the compromise)

No.11 Notice to proposed guardian of a minor defendant "Order 32, Rule 3, sub-ruble (8)".

To

(Name, description and place of residence of proposed guardian)

Take notice that .....Plaintiff in..... .....has presented a petition to the Court praying that you be appointed guardian ad litem to the minor defendant (S) and that the same will be heard on the .....day of.....19 .

2. The affidavit of X has been filed in support of this application.

3. If you are willing to act as guardian for the said defendant (S) you are required to sign (or affix your mark to) the declaration on the back of this notice.

4. In the event of your failure to signify your express consent in the manner indicated above, take further notice that the Court may proceed under Order XXXII, Rule 3 sub-rule (8), Code of Civil Procedure to appoint some other suitable person or one of its officers as guardian ad litem of the minor defendant (S) aforesaid.

Dated the.....day of.....19

Sd/-

(To be printed on the reverse).

I hereby acknowledge receipt of a duplicate of this notice

notice and consent to act as guardian of the minor - defendant (s) therein mentioned.

Sd/- Y.Z.

Witnesses:-

1.

2.

(e) Add' of the following as Rule 14A:-

14. A. The appointment or discharge of next friend of a minor plaintiff or guardian of a minor defendant for a suit pending before the High Court shall be deemed to be a quasi judicial act within the meaning of Section 128(2) (i) and may be performed by the Registrar, provided that - contested applications and applications presented out of time shall be posted before a Judge for disposal.

(f) Omit the present Form No.11 in Appendix H.

J. Shanmugam
Registrar.

Civil 1617

G. R. S. App. F VI—G 2]

SUBJECT .....

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.....

*Diary No. of letter replied to*.....

Section. C/S

File No. 211-37

Serial No. 2

General and Revenue Secretariat

( )

*the* 193 .

*Proceedings of the Government of His Highness the* ***Maharaja*** *of Mysore.*

Date of issue 16.7. 1938.

*Read*—

Signed by Mr. MKR

Letter No Roc 588/27-28 Dy 28.6.1938 from the Registrar High Court requesting sanction of Govt to the ~~issue of certain amendments~~ amend to the Rules ~~Order thereon. No.~~ 3, 4, ~~and~~ 7, and 14 of Order XXXII of the Code of Civil Procedure 1911 as set out in the Statement annexed hereto.

Order No P337/Revenue (PP1-5) Dy 16-7-38

Sanctioned

for

Chief Secretary to Govt

May this be—

(i) printed ?

(ii) treated as a standing order ?

(iii) published in the Gazette, English Part ?

(iv) translated ?

(v) placed at the disposal of the press ?

(vi) published in the Gazette, Kannada Part ?

To

The Registrar High Court..

## APPENDIX.

Amendments of Rules 3, 4,7 and 14 of Order XXXII of the Code of Civil Procedure.

(a) Substitute the following for the existing Rule 3:-

3. (1) Subject to the other provisions of this rule, any person who is of sound mind and has attained majority may act as next friend of a minor plaintiff or, if so appointed by the Court, be the guardian of a minor defendant for a suit provided that the interest of that person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or in the case of a guardian for the suit, a plaintiff.

(2) When a defendant is a minor, the Court on being satisfied of his minority shall appoint a proper person to be his guardian for the suit.

(3) When a minor party has a guardian appointed or declared by competent authority, or, where there is no such guardian and the minor party has his father or other natural guardian according to his personal law, no person other than such guardian appointed or declared by competent authority, or father or other natural guardian as the case may be shall, act as next friend of the minor, if a plaintiff, or be appointed his guardian for a suit, if he is a defendant, unless the Court finds, for reasons which shall be recorded that it is for the minor's welfare that some other person be permitted to act as his next friend or be appointed his guardian for the suit, as the case may be.

(4) An application for the appointment of a guardian of a minor defendant for a suit may be made by the plaintiff in the suit or by any person interested in the minor defendant.

(5) Every application made under sub-rule (4) shall be supported by an affidavit verifying the fact that the proposed guardians has not, or that none of the proposed guardians has, any interest in the matters in controversy

controversy in the suit adverse to that of the minor ~~and that of the minor~~ and that the proposed guardian or guardians are fit persons to be so appointed. The affidavit shall further state according to the circumstances of each case (a) the name and address of the natural guardian, if any, of the minor -- defendant according to his personal law or of his guardian, if any, appointed or declared by competent authority, or (b) if there is no such guardian, the name and address of the person in whose care the minor defendant is and the name and address of the person if any, who is the defacto manager of the minor defendant's property, and (c) the names and addresses of persons, if any, suitable by reason of relationship, interest or otherwise to be appointed guardian of the minor defendant for the suit if the Court does not appoint any natural guardian, or legally appointed or declared guardian or manager or person in whose care the minor defendant is as herein described.

(6) No application for the appointment of a guardian of a minor defendant for a suit shall be combined with an application for bringing on record a legal representative of a deceased plaintiff or defendant.

(7) No order shall be made on any application -- presented under sub-rule (4) above except after notice to the natural guardian, if any, of the minor defendant according to his personal law or to his legally appointed or declared guardian, if any, or, if there is no such guardian to the person in whose care the minor defendant is and to the defacto manager of his property, if any, and after hearing any objection urged by or on behalf of any such person or of any ~~any~~ other person interested in the minor defendant, provided that the Court may, in any case, if it thinks fit, issue a notice to the minor also.

(8) No person shall, without his consent, be appointed guardian of a minor defendant for a suit. Whenever an application is made proposing the name of a person as guardian of a minor defendant for a suit, a notice in Form No.11. set forth in Appendix H. hereto shall be served on

on the proposed guardian, unless the applicant himself be the proposed guardian or the proposed guardian consents.

(9) If the Court finds no other person competent and willing to be appointed guardian of a minor defendant for a suit, the Court may appoint any of its officers or a pleader of the Court to be the guardian.

(10) When a guardian for the suit of a minor defendant is appointed and it is made to appear to the Court that the guardian is not in possession of any or sufficient funds for the conduct of the suit on behalf of the defendant and that the defendant will be prejudiced in his defence thereby, the Court may, from time to time, order the plaintiff to advance moneys to the guardian for purpose of his defence and all moneys so advanced shall form part of the costs of the plaintiff in the suit. The order shall direct that the guardian, as and when directed, shall file in Court an account of the moneys so received by him.

(b) Omit Rule 4.

(c) Add the following as sub rule 1A to Rule 7(1).

When an application is made to the Court in any suit to which a minor is a party for leave to enter into an agreement or compromise or to withdraw the suit in pursuance of a compromise or to take any other action on behalf of the minor and the minor's next friend or guardian is represented by a pleader, the pleader shall file in Court with the application a certificate to the effect that the agreement or compromise or action proposed is in his opinion for the benefit of the minor. A decree or order for the compromise of a suit to which a minor is a party, shall recite the sanction of the Court thereto and shall set out the terms of the compromise as in Form No.24 in Appendix D to this schedule.

(d) Add the following as Form No.24 in Appendix D.

Form No.24.

Decree sanctioning a compromise of a suit on behalf of a minor or lunatic.

Title.

This suit coming on this day for final disposal before ... ..... in the presence of.....etc., and C.D., the Plaintiff, a minor by next friend..... and E.F., the Defendant, a minor by guardian ad litem ..... .... .....applying that this suit may be compromised in the terms of an agreement in writing dated the..... .....day of..... and made between C.D. the Plaintiff, minor by the said next friend of the one ~~the~~ part, and the said E.F. by the said guardian - ad litem of the ~~the~~ other part, (or on the terms hereafter set forth) and, it appearing to this Court that the said compromise is fit and proper and for the benefit of the said minor this Court doth sanction the said compromise, on behalf of the said minor and with the ~~cosent~~ Consent of all parties hereto:-

It is ordered as follows:-

(Set out the terms of the compromise)

No.11 Notice to proposed guardian of a minor Defendant "Order 32, Rule 3, sub-rule (8)".

To

(Name, description and place of residence of propposed guardian).

Take notice that.....Plaintiff in..... .....has presented a petition to the Court praying that you be appointed guardian ad litem to the minor defendant (S) and that the same will be heard on the..... .....day of..... .....19 .

(2) The affidavit of X has been filed in support of this application.

If you are willing to act as guardian for the said defendant (s) you are required to sign (or affix your mark to) the declaration on the back of this notice.

4. In the event of your failure to signify your express consent in the manner indicated above, take further notice that the Court may proceed under Order XXXII, Rule 3 sub-rule (8), Code of Civil Procedure to appoint some other suitable person or one of its officers as guardian ad litem of the minor defendant (S) aforesaidl

Dated the.....day of.....19 .

Sd/-
(To be printed on the reverse)

I hereby acknowledge receipt of a duplicate of this notice and consent to act as guardian of the minor defendant (s) therein mentioned.

Sd/- Y. Z.

Witnesses:-

1.

2.

(e) Add of the following as Rule 14 A:-

14. A. The appointment or discharge of next friend of a minor plaintiff or guardian of a minor defendant for a suit pending before the High Court shall be deemed to be a quasi judicial act within the meaning of Section 128(2)(i) and may be performed by the Registrar, provided that contested applications and applications presented out of time shall be posted before a Judge for disposal.

(f) Omit the present Form No.11 in Appendix H.

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B.R. Ramakrishnaiya
For Chief Secretary to Govt